

## **IC 26-4-6**

### **Chapter 6. Payments to Producers Under the Grain Indemnity Program**

#### **IC 26-4-6-1**

##### **Restrictions on use of fund; nonseverability of provision**

Sec. 1. (a) Except as provided in section 2 of this chapter, the money in the fund:

(1) is not available for any purpose other than the payment of valid claims or refunds to producers who do not want to participate in the fund; and

(2) may not be transferred to any other fund.

(b) The limiting and nontransferability provision of subsection (a) is declared to be nonseverable from the whole of this article. If subsection (a) is held to be invalid, repealed, or substantially amended, this article shall immediately become invalid and the money remaining in the fund shall be distributed to participants in the fund in a manner that is proportional to the amount of producer premiums each producer paid to the fund.

*As added by P.L.250-1995, SEC.1.*

#### **IC 26-4-6-2**

##### **Payment of administrative and legal expenses**

Sec. 2. The board is authorized to pay the administrative expenses or the fund from the administrative expenses account established by IC 26-4-4-2(b) and to pay the fund's legal fees and legal expenses from the fund.

*As added by P.L.250-1995, SEC.1.*

#### **IC 26-4-6-3**

##### **Compensation from fund; extension**

Sec. 3. (a) Except as provided in subsection (b), within ninety (90) days of the board's approval of a valid claim, the board shall compensate from the fund, in an amount described in section 4 of this chapter and in the manner described in subsection (c), a claimant who has incurred a financial loss or storage loss due to a failure of a grain buyer or warehouseman.

(b) The time for payment may be extended if the board and claimant mutually agree and put the terms of the payment in writing.

(c) If:

(1) a claimant engaged in farming operations granted to one (1) or more secured parties one (1) or more security interests in the grain related to the claimant's claim under this section; and

(2) one (1) or more secured parties described in subdivision (1) have given to:

(A) the licensee prior written notice of the security interest under IC 26-1-9.1-320(a)(1) or IC 26-1-9-307(1)(a) before its repeal; and

(B) the board prior written notice of the security interest with respect to the grain described in subdivision (1)

sufficient to give the board a reasonable opportunity to cause the issuance of a joint check under this subsection; the board may compensate the claimant described in subdivision (1) in the amount to which the claimant is entitled under section 4 of this chapter by causing the issuance of a check payable jointly to the order of the claimant and any secured party described in subdivision (1) who has given the notices described in subdivision (2). If only one (1) secured party described in subdivision (1) is a payee, the rights of the secured party in the check shall be to the extent of the indebtedness of the claimant to the secured party. If two (2) or more secured parties described in subdivision (1) are payees, the nature, extent, and priority of their respective rights in the check are determined in the same manner as the nature, extent, and priority of their respective security interest under IC 26-1-9.1.  
*As added by P.L.250-1995, SEC.1. Amended by P.L.115-1999, SEC.5; P.L.1-2002, SEC.102.*

#### **IC 26-4-6-4**

##### **Percentage of compensation**

Sec. 4. (a) A claimant who has incurred a storage loss due to the failure of a warehouseman is entitled to be compensated by the board from the fund for one hundred percent (100%) of the storage loss incurred less any producer premium that would have been due on the sale of the grain. The gross amount of the storage loss shall be as determined by the agency for warehouses licensed under IC 26-3-7 or by the United States Department of Agriculture for warehouses licensed under the United States Warehouse Act. The warehouseman and claimants may submit to the agency evidence related to outstanding charges against stored grain. If the evidence is submitted, the agency shall determine the storage loss payable by the board.

(b) A claimant who has incurred a financial loss due to the failure of a grain buyer is entitled to be compensated by the board from the fund for eighty percent (80%) of the loss incurred. The agency shall determine the loss incurred in the following manner:

- (1) For grain that has been priced, the loss shall be the value of the priced grain less any outstanding charges against the grain.
- (2) For grain sold to a grain buyer who is also a warehouseman and that has not been priced, the loss shall be established using the price determined for the storage obligations.
- (3) For grain sold to a grain buyer who is not a warehouseman and that has not been priced, the loss shall be established using a price determined by the agency using the same procedures used by the agency to determine the price at the warehouse.

*As added by P.L.250-1995, SEC.1.*

#### **IC 26-4-6-5**

##### **Validity of claim; time**

Sec. 5. A claim under section 4 of this chapter is valid only if brought within one (1) year after the notice of the failure of the grain buyer is published under IC 26-4-3-7(5).

*As added by P.L.250-1995, SEC.1.*

#### **IC 26-4-6-6**

##### **Subrogation of claim**

Sec. 6. A claimant compensated under this chapter may be required to subrogate to the board or corporation all the claimant's rights to collect on a bond issued under IC 26-3-7 or the United States Warehouse Act and all the claimant's rights to any other compensation arising from the failure of the grain buyer or warehouseman. If so required, the claimant shall assign all the claimant's rights, title, and interest in any judgment concerning the failure to the board or corporation.

*As added by P.L.250-1995, SEC.1. Amended by P.L.173-1999, SEC.20.*

#### **IC 26-4-6-7**

##### **Denial of claim**

Sec. 7. The board shall deny the payment of compensation under this chapter to a claimant who has incurred a financial loss or storage loss due to the failure of a warehouse or grain buyer when the board determines the existence of any of the following:

- (1) The claimant as payee has failed to present for payment a negotiable instrument issued as payment for grain within ninety (90) days from the date the negotiable instrument is tendered to the claimant in satisfaction of obligations for grain purchased by the licensed grain establishment.
- (2) The claimant has engaged in conduct or practices that differ from generally accepted marketing practices within the grain industry to an extent that the claimant's actions have substantially contributed to the claimant's loss. The Indiana grain indemnity board may consider whether contracts not excluded under IC 26-3-7-4 are to be generally accepted marketing practices within the grain industry.

*As added by P.L.250-1995, SEC.1. Amended by P.L.139-1996, SEC.13.*

#### **IC 26-4-6-8**

##### **Duties of board following failure to pay by warehouse or grain buyer**

Sec. 8. After the agency has determined that a grain buyer or warehouse has defaulted payment or failed, the board shall have the following duties:

- (1) Determine the valid claims and the amount of such claims to be paid to claimants for financial losses that were incurred due to the failure of a grain buyer or warehouseman.
- (2) Authorize payment of money from the fund when necessary for the purpose of compensating claimants in accordance with the provisions of this chapter.
- (3) Collect money through subrogated claims against bonds filed under IC 26-3-7 in the place of claimants who collected for

a loss incurred due to a warehouse or grain buyer failure.

(4) Borrow money as authorized under IC 26-4-3-9 if the fund has insufficient money to cover valid claims.

(5) Deposit into the fund any remaining grain assets of a failed grain buyer or warehouseman for the purpose of repayment to the fund the money used to pay claimants, subject to any priority lien right a holder of a mortgage, security interest, or other encumbrance may possess under any other applicable law. Any repayment into the fund may not exceed the principal amount paid to claimants plus interest at the rate paid on ninety (90) day United States Treasury bills.

(6) If the amount in the fund is insufficient to pay all valid claims in accordance with this chapter and the board is unable to borrow funds for whatever reason, grant priority of payment of all the claims in the order the claims were approved as valid by the board.

*As added by P.L.250-1995, SEC.1. Amended by P.L.173-1999, SEC.21.*